

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JOSEPH K. McCAMMON IV
EXECUTOR OF THE ESTATE OF
JOSEPH K. McCAMMON III, DECEASED

Claim No. CU-2297

Decision No. CU -525

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

J. B. Kellison, Esquire

AMENDED PROPOSED DECISION

By Proposed Decision dated October 25, 1967, the Commission denied this claim based upon the loss of interests in bonds issued by the Cuba Northern Railways Company and The Cuba Railroad Company for failure of proof.

Subsequently, claimant, through counsel, objected to the Proposed Decision and submitted additional evidence in support of this claim. Full consideration having been given to the entire record, including claimant's objections, it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$4,000.00, plus interest, was presented by JOSEPH K. McCAMMON IV, EXECUTOR OF THE ESTATE OF JOSEPH K. McCAMMON III, DECEASED based upon the loss of interests in bonds issued by the Cuba Northern Railways Company and The Cuba Railroad Company. The record discloses that decedent was, and the subsequent beneficial owners of this claim were and are, nationals of the United States by birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property, including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of evidence of record, the Commission finds that decedent was, and since prior to October 13, 1960, had been the owner of one bond in the original face amount of \$1,000.00, issued by The Cuba Railroad Company and one of an issue known as "First Mortgage Gold Bonds, 4%, due June 30, 1970" issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bond in question is No. TRM 1240. Pursuant to the Supplemental Indenture of July 1, 1952, the bond is over-stamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance.

The Commission further finds that decedent was, and since prior to October 13, 1960 had been the owner of three bonds in the original face amount of \$1,000.00 each, issued by the Cuba Northern Railways Company and known as "First Mortgage Gold Bonds, 4%, due June 30, 1970" (originally First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee. The bonds in question are Nos. TRM3814 through TRM3816, inclusive.

The record discloses that Joseph K. McCammon III died, testate, on November 8, 1964, and that by the terms of his will, a trust was established for the benefit of his wife, Marjorie S. McCammon, a national of the United States since her birth in the United States. Joseph K. McCammon III's will further provided that upon the death of Marjorie S. McCammon, the principal of the aforementioned trust would be divided between his two children, Joseph K. McCammon IV and Susan McCammon. The record discloses that Marjorie S. McCammon died on May 23, 1965. Joseph McCammon IV and Susan McCammon have been nationals of the United States since their birth in the United States.

The Cuba Railroad Company and the Cuba Northern Railways Company were owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba). They were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Consolidated Railroads and Cuba Northern Railways were organized under the laws of Cuba and neither would qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Moreover, although Cuba Railroads was organized in New Jersey, it was owned by Consolidated Railroads and does not qualify as a national of the United States under Section 502(1)(B) (supra). See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62

[July-Dec. 1966].)

In this type of situation it has been held previously that a claimant is entitled to file a claim based upon such bonds which represent debts of a nationalized enterprise or changes upon nationalized property within the purview of Section 502(3) of the Act. (See Claim of Joseph Gans, Claim No. CU-1720 and Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

The Cuba Northern Railways Company, by Indenture dated July 1, 1927, issued bonds known as "First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942.

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000.00 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

In 1952, pursuant to a "Plan for Readjustment of Bonded Debt of the Company," bondholders surrendered their 5-1/2% bonds and received in exchange First Mortgage Gold Bonds due June 30, 1970. The original \$1,000.00 face amount was reduced to \$635.00 and interest at 4% per annum was payable on June 1 and December 1 of each year. The last payment of interest on these bonds was made on December 1, 1958.

The "First Mortgage, 50 Year Gold Bonds, 5%, due July 1, 1952" of The Cuba Railroad Company were also reissued in 1952 with reduced principal amounts and interest at 4% per annum. In 1952 the outstanding principal balance due on a bond originally issued in the face amount of \$1,000.00 was \$460.00; information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission concludes that as a result of the nationalization of the properties of the Cuba Northern Railways Company and The Cuba Railroad Company, a loss was sustained in connection with these bonds, within the meaning of Title V of the Act.

The Commission finds that:

1) The total amount of unpaid indebtedness on decedent's Cuba Railroad Company First Mortgage Gold Bond, 4%, due June 30, 1970, on October 13, 1960, the date of loss was \$492.86 including the principal amount of \$460.00 and the interest due on the bond in the amount of \$32.86.

2) The total amount of unpaid indebtedness on decedent's Cuba Northern Railways First Mortgage Gold Bonds, 4%, due June 30, 1970, on October 13, 1960, the date of loss was \$2,047.68 including the principal amount of \$1,905.00 and the interest due on the bonds of \$142.68.

The Commission concludes that the total amount of the unpaid indebtedness on all of decedent's bonds was \$2,540.54 including the total principal amount of \$2,365.00 and the interest due on these bonds as of October 13, 1960, the date of loss, in the total amount of \$175.54.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH K. McCAMMON IV, EXECUTOR OF THE ESTATE OF JOSEPH K. McCAMMON III, DECEASED succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Five Hundred Forty Dollars and Fifty-Four Cents (\$2,540.54) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.
and entered as the Amended
Proposed Decision of the
Commission

SEP 4 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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IN THE MATTER OF THE CLAIM OF

JOSEPH K. MC CAMMON, IV, EXECUTOR
Of The Estate of JOSEPH K. MC CAMMON, III
Deceased

Claim No. CU -2297

Decision No. CU 525

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

J. B. Kellison, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$4,000.00 plus interest, was presented by JOSEPH K. MC CAMMON, IV, based upon the asserted loss of bonds of the Cuba Northern Railway Company and the Cuba Railway Company of Cuba. The decedent was a national of the United States from his birth in the District of Columbia until his death in 1964.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba arising since January 1, 1959 for

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Section 502(3) of the Act provides:

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Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims that

(a) A claim shall not be considered under Section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof in all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership, by the decedent, of certain stock interests in the Cuba Railway Company and the Cuba Northern Railway Company of Cuba; however, claimant has submitted no documentary evidence of probative value in support of his claim. By Commission letter of July 10, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish his claim under the Act.

On August 22, 1967, counsel was invited to submit any evidence he might have within 45 days from that date, and he was informed, that, absent such evidence it might become necessary to determine the claim on the basis of the present record. Other than proof of the decedent's nationality and of the Executor's appointment, no evidence of probative value has been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership, by the decedent, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

Neither has the claimant established that the claim, if any, has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 25 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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